IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION No. 964 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VALLABHBHAI RAMBHAI MAADAM - Applicant(s)

Versus

THE STATE OF GUJARAT & 4 - Respondent(s)

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Appearance :

MR MM TIRMIZI for Petitioner No(s).: 1.

MR GOHIL, Ld. APP for Respondent No(s).: 1.
NOTICE SERVED for Respondent No(s).: 2, 3, 4,5.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 18/08/2005

ORAL JUDGMENT

1.Rule. Mr.Gohil, learned APP for the State respondents waives notice of rule and matter is finally heard today with consent of parties.

2.The petitioner has preferred this petition for directions to the respondent authority to protect and safe-guard the life and liberty of the son of the petitioner.

3.Heard Mr.Tirmizi, learned Counsel for the petitioner and Mr.Gohil, learned APP for the State.

4.Upon hearing the learned Counsel for the petitioner, it appears that the petition is on the apprehension that the son of the petitioner, who is in judicial custody, may be eliminated on the ground of fake encounter when he is in police custody in connection with some other offence. Mr.Tirmizi, learned Counsel for the petitioner has relied upon the decision of the Apex Court in the case of “Ahmed Noormohmed Bhatti v. State of Gujarat and Ors.”, reported in 2005(2) GLR, 1402 for contending that even at the time of arrest the guidelines issued by the Apex Court in the decision in the case of “D.K.Basu v. State of West Bengal”, reported in 1997(1) SCC, 416 are required to be followed and he, therefore, submitted that keeping in view the aforesaid aspect and the facts and circumstances, appropriate directions may be issued to the Police with a view to rule out the possibility of fake encounter. He also submitted that the son of the

petitioner himself wants that he may be hand-cuffed as and when the Police require his presence outside the jail, may be for police custody or for attending court. He further submitted that if the son of the petitioner is hand-cuffed by the police on his own volition, the Police may not be in a position to contend that the petitioner made any attempt to run away which may also result into eliminating the possibility of fake encounter.

5. Mr.Gohil, learned APP for the State, submitted on that the apprehension is ill-founded and as such the police are bound to follow the guidelines as issued by the Apex Court in case of “D.K.Basu v. State of West Bengal” (supra). However, he submitted that if appropriate direction is given by this Court, the State shall abide by the same. He also submitted that if the son of the petitioner is hand-cuffed, the Police may be required to face contempt proceedings etc., and, therefore, if the son of the petitioner is accordingly desirous to be hand-cuffed, the declaration on oath may be filed in the proceedings of this Court or before the learned Magistrate. Mr.Gohil, learned APP also submitted that if the direction is given by this Court to intimate to the relative of the son of the

petitioner while taking him outside the jail, then in such circumstances, even if the petitioner suffers any injury or there is any medical problem, it may not be possible for the police to transfer the son of the petitioner to the hospital and, therefore, he submitted that for such purpose appropriate care may be taken while issuing directions of this Court.

6. Having considered the above, it appears that it is an admitted position that at present the son of the petitioner is not in police custody, but is in judicial custody. Therefore, as and when the police require the presence or custody of son of the petitioner for interrogation in connection with other offence, appropriate application is even otherwise required to be made by the police to the concerned Court in whose judicial custody the son of the petitioner is detained and it is only after the permission is granted the police custody would be given. Therefore, in view of such legal position as and when the petitioner is to be taken outside the jail by the police in police custody as the same would be under the orders of the Court, no specific direction is required for intimating the learned Magistrate concerned for such purpose.

7. As such there is no authenticated material produced on

record by the petitioner for the apprehension that his son may be eliminated in the fake encounter, except the allegation that in connection with one another accused named Rafik Bapudi such incident had happened. However, it appears that whether the accused is in judicial custody or in police custody, it is the duty of the State or the concerned Police Officer to see that the security of the accused is properly taken care of. Since the son of the petitioner at present is in judicial custody, it would be for the concerned jail authority to ensure safety of the son of the petitioner during the period when he is in judicial custody. If there is any order passed by the concerned Court entrusting the custody of the son of the petitioner for police investigation in connection with other offence, the concerned Police officer shall be at liberty to investigate and interrogate son of the petitioner. However, while doing so following directions shall be complied with;

1. as and when the son of the petitioner is taken into police custody, the nearest relative to whom the son of the petitioner may name shall be intimated telephonically, if there is no time and if there is sufficient time, additional

communication shall also be made through the concerned local Police Station;

2. the lawyer of the son of the petitioner shall be allowed to see the son of the petitioner for 15 minutes every day during the period when the son of the petitioner is in police custody;

3. whenever the concerned police officer investigating into the matter, is desirous to take the son of the petitioner for investigation outside the police station, the concerned District Superintendent of Police shall be informed in writing and after the detention of the petitioner in police custody, the same shall also be accordingly reported to the said District Superintendent of Police.

4. If the son of the petitioner files affidavit for his hand-cuffing voluntarily during the period when he is carried outside the Police Station, and further files undertaking not to initiate any proceedings against the concerned police officer for such hand-cuffing, the son of the petitioner may be hand-cuffed while he is taken outside the police station for investigation/interrogation. A certified copy of such affidavit and undertaking

shall also be produced by the lawyer/relative of the son of the petitioner before the concerned police officer as and when it is so intimated that the son of the petitioner is taken into police custody.

5. It deserves to be recorded that the present order is passed considering the peculiar facts and circumstances and shall not be treated as precedent.

8.The petition is allowed of in terms of the aforesaid directions. Rule made absolute accordingly.

18.8.005 **(Jayant Patel, J.)**

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